

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

AMERICAN PILEDIVING
EQUIPMENT, INC.

Plaintiff

vs.

HAMMER & STEEL, INC.

Defendant.

)
)
) Case No. 4:11-CV-00811-CDP
)
)

)
) **JURY TRIAL DEMANDED**
)
)

DECLARATION OF JOSEPH DITTMEIER

I, Joseph Dittmeier, having personal knowledge of the facts stated below and, under penalty of perjury, hereby declare the following to my best knowledge, information and belief:

1. I am the President of Defendant, Hammer & Steel, Inc., and have held that office for more than twenty years. I am personally involved in the management of Hammer & Steel, Inc.
2. Hammer & Steel, Inc. did not learn that the HPSI piledrivers were subject to any alleged patent rights of Plaintiff until after American Piledriving Equipment, Inc. ("APE") filed suit against HPSI, alleging patent infringement, during 2008.
3. Hammer & Steel, Inc. purchased eight vibratory piledrivers from HPSI, four Model 500's and four Model 250's and resold seven of those units on the dates set forth in the below table:

Model 500

<u>Serial No.</u>	<u>Date Purchased</u>	<u>Date Sold</u>	<u>Purchaser</u>
1124	1-5-1998	5-31-2004	A & L, Inc. Belle Vernon, PA
1138	6-2-1998	9-18-2001	Illinois Constructors Corporation, Inc. Elburn, IL
<u>Serial No.</u>	<u>Date Purchased</u>	<u>Date Sold</u>	<u>Purchaser</u>
1230	2-25-1999	3-2-1999	Mid-West Equipment Leasing Corporation Tremont, IL
1259	7-19-1999	4-27-2004	Illinois Constructors Corporation, Inc. Elburn, IL

Model 250

<u>Serial No.</u>	<u>Date Purchased</u>	<u>Date Sold</u>	<u>Purchaser</u>
1161	5-13-1998	8-8-2003	BRB Contractors, Inc. Topeka, KS
1194	3-10-2000	3-28-2001	Park Construction Minneapolis, MN
1253	5-28-1999	Hammer & Steel still has this unit.	
1972	8-21-2006	8-23-2006	Heavy Equipment Services East Moline, IL (May have moved to Freeport, IL)

4. As set forth in ¶ 3 above, Hammer & Steel, Inc. resold six of the eight piledrivers it purchased from HPSI on or before May 31, 2004, more than seven years before APE filed its Complaint against Hammer & Steel, Inc.

5. The only two HPSI piledrivers that Hammer & Steel, Inc. has purchased, imported, exported, used, rented, or sold on or after May 9, 2005 (six years before the Complaint was filed) are Serial Nos. 1972 and 1253.

6. An inspection of Serial No. 1253 (a Model 250) on November 1, 2011 revealed that it is a later model, non-infringing, piledriver.

7. Hammer & Steel, Inc. purchased Serial No. 1972 (a Model 250) on August 21, 2006 and resold it two days later, on August 23, 2006. See the table in ¶ 3 above. APE has admitted in its discovery responses that Serial No. 1972 is a later model, non-infringing, piledriver. See ¶ 10 on Page I.D. Number 286 and APE's responses to Defendant's Requests to Admit No. 9 and 10 on Page I.D. Number 311 of Document Nos. 26 and 26-2.

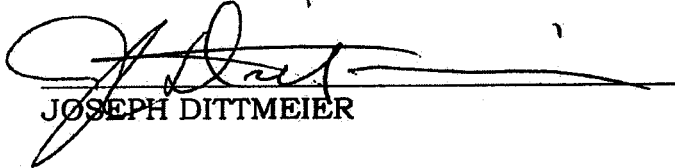
8. Hammer & Steel, Inc. is not a distributor or dealer of HPSI vibratory piledrivers. It has not purchased a vibratory piledriver from HPSI since August 2006.

9. Hammer & Steel, Inc. does not intend to buy, sell, use, rent, export, import or otherwise use or deal with any HPSI vibratory piledriver that could possibly be an early model piledriver which infringes Patent '964.

10. Hammer & Steel, Inc. does not intend to purchase, use, sell, export or import any later model, non-infringing, HPSI vibratory piledrivers other than Serial No. 1253, which Hammer & Steel, Inc. still owns and rents to customers. Serial No. 1253 is a later model, non-infringing, piledriver.

11. I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct to my best knowledge, information and belief.

Executed on the 2 day of November, 2011.


JOSEPH DITTMEIER